

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5140 OF 2020

Sanjay s/o Bhagirath Sharma
Age- 44 years, Occ- Service,
R/o. New Plot Bhagwat Road,
Amalner, Tq. Amalner, Dist. Jalgaon.

...**PETITIONER**

VERSUS

1. Khandesh Education Society
Amalner, Tq. Amalner,
Dist. Jalgaon,
Through its Chairman/Secretary.

2. Khandesh Education Society,
Pratap College, Amalner,
Tq. Amalner, Dist. Jalgaon,
Through its Principal

3. Joint Director of Education
Jalgaon Department,
Jalgaon.

...**RESPONDENTS**

Mr. Vijay Deshmukh, Advocate for Petitioner.

Mr. S.W. Munde, AGP for State.

Mr. Manish Navandar for Respondent No. 1 and 2.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 1st MARCH, 2022

JUDGMENT :

1. Rule. Rule made returnable forthwith and heard with the

consent of parties.

2. This petition impugns the judgment dated 18.06.2019 passed by the learned Presiding Officer, University and College Tribunal, Aurangabad in Appeal No. NMU/05/2016, to the extent it denies continuity of service and permanency benefits to the Petitioner.

3. In September-2001 the Petitioner was appointed on the post of peon by Respondent No. 1- Management at Respondent No. 2- College. By appointment order dated 02.08.2002 the petitioner was appointed as peon for the academic year 2002-03. The appointment was on purely temporary basis in a college which was not receiving any grant. The Petitioner was working in Institute of Management and Computer Research (I.M.C.R.). The Petitioner was thereafter continued on year to year basis without any break for almost 15 years that too on clear, vacant and permanent post. The respondents were regularly issuing appointment orders to the petitioner without giving any break. The Petitioner completed his B. Com in the year 2008 from Yashwantrao Chavan Open University.

4. In pursuant to the advertisement dated 18.08.2008, the Petitioner applied for the post of Peon. However, the petitioner was not considered for appointment on the said post. Thereafter, by resolution dated 19.10.2010 and 31.05.2012, the Respondent No. 1 I.M.C.R., with Respondent No. 2-College and all the employees including the Petitioner, who were working in I.M.C.R., department were transferred and accommodated in Respondent No. 2-College. The Petitioner submitted application dated 25.05.2011 for continuation of his service for the academic year 2011-12. Respondent No.1, on 30th May, 2015 resolved to absorb the petitioner on clear permanent vacant post of peon on grant in aid basis and give him preference at the time of filling up the post of non teaching staff as and when the post is available and also to give him continuity in service, considering his past service of about 14 years as a Peon. A certificate dated 04.11.2015 was issued to the Petitioner stating that he has worked since 2001 and his performance is satisfactory. Similar certificate is issued by Respondent No. 2 to the Petitioner on 23.04.2015. The Petitioner submitted an application to the Respondents on 07.09.2015 for hike in salary. His application was

forwarded by Respondent No. 1 to Respondent No. 2 thereby directing to increase salary of the Petitioner. Accordingly, the Petitioner's salary was increased to Rs. 7,000/- per month. Ultimately, as the Petitioner did not receive appointment order for the academic year 2016-17 due to the conflict in two groups of management, the respondents asked the Petitioner not to sign the muster roll till the dispute is resolved. On 08.08.2016, the Respondent No. 2 orally directed the Petitioner not to attend the duty till further orders. Hence, the Petitioner filed an appeal challenging his oral termination. In the appeal petitioner claimed following reliefs :-

- A) *Record and proceedings of the case may kindly be called for.*
- B) *The impugned order/otherwise termination dated 08.08.2016 of the appellant at the hands of respondents Nos. 1 and 2 may kindly be quashed and set aside.*
- C) *The appellant be reinstated on the same post on which he was working along with continuity, seniority and permanency in service.*
- D) *That, the arrears of salary including the difference in salary be directed to pay.*
- E) *Pass such other orders which are necessary in the facts and circumstances of the case in favour of the appellant.*

5. After hearing the parties, the Tribunal has partly allowed

the appeal of the Petitioner in terms of prayer clause 'C' and directed the Respondents No. 1 and 2 to reinstate the Petitioner on the same post on which he was working within a period two months and disallowed the other part of prayer clause 'C'. The Petitioner is aggrieved by the denial of relief of continuity, seniority and permanency in service.

6. Heard rival submissions of respective advocates. Perused the record. The Respondents No. 1 and 2 being Management have not challenged the decision of appeal in favour of the Petitioner. Admittedly, the Tribunal has partly allowed the appeal filed by the Petitioner taking into consideration the fact that the Petitioner has rendered uninterrupted service of 15 years with the Respondent-Management. The certificates issued by the Management which were produced on record by the Petitioner show that the Petitioner has rendered honest, sincere and satisfactory service. The Tribunal has found that for 15 years the Petitioner has been continued on year to year basis without any break in service. However, the Tribunal has considered the contentions of Respondents that the Petitioner was

continued on temporary basis and there was no permission of State Government and University for filling upon vacancies in the Respondents, since the Respondent was on permanent non grant basis. The Tribunal has also taken into consideration the resolution passed by the Respondents on 30.5.2015 to absorb the Petitioner on clear vacant and permanent post as grant-in-aid basis and to give preference to him while filling up post of non teaching staff as and when post is available and to give continuity in service considering his past honest service of about 15 years as Peon. In that view of the matter, the Tribunal ought to have granted continuity in service and permanency benefit to the Petitioner. The necessary consequence of reinstatement in service would be continuity in service and permanency benefits. However, the Tribunal disallowed the continuity in service and permanency benefits to the Petitioner by observing that it is not permissible in law.

7. While disallowing the continuity in service and permanency benefit to the Petitioner, the Tribunal has lost sight of the provisions of Section 61(f) of the Maharashtra Universities Act, 1994, which reads thus:-

Powers of Tribunal to give appropriate reliefs and directions.

61. (1) XXXX

(2) XXXX

(a) XXXX

(b) XXXX

(c) XXXX

(d) XXXX

(e) XXXX

(f) to give such other relief to the employee and to observe such other conditions as it may specify, having regard to the circumstances of the case.

8. In the light of above provision, the Tribunal ought to have allowed the appeal by granting relief in terms of prayer clause 'C' and the Tribunal was not justified in partly allowing the appeal.

9. When the Tribunal granted prayer of the Petitioner taking into consideration the fact that the Petitioner was continuously working on the post of Peon with the Respondents-Management since last more than 15 years, the Tribunal ought to have granted continuity in service and permanency benefits to the Petitioner.

10. On a query by this Court, the Petitioner has placed on record a copy of information received by him under Right To

Information, which shows that 17 posts of Peon are vacant with the Respondent.

11. For the aforesaid reasons, the writ petition is allowed by setting aside the impugned judgment of the College Tribunal passed in Appeal No. NMU-05/2016 to the extent it denies continuity of service and permanency benefits to the Petitioner.

12. The appeal filed by the petitioner is thus allowed in terms of prayer clause 'C' of the appeal memo.

13. Since the Tribunal has already passed order in respect of backwages, no separate order is passed in that behalf.

14. Rule is made absolute in above terms with no order as to costs.

[NITIN B. SURYAWANSHI]
JUDGE